IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13540 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SWASTIK TEXTILE ENGG. PVT. LTD. - Petitioner(s)

Versus

NAGARDAS VIRCHAND - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner No(s).: 1.

MR TR MISHRA for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 04.02.2000 passed by the Labour Court, Ahmedabad, in

Reference (LCA) No. 1030 of 1990, whereby the order of retirement passed by the petitioner Company was canceled and the correct date of birth of the respondent was held to be 02.12.1932. It was further directed to pay all other benefits to the respondent as per the Standing Orders of the Company.

2.0 The respondent herein joined the service of the petitioner Company in the year 1962. In the declaration and nomination form filled-in by the respondent under the Employees Provident Funds Scheme, 1952, the respondent mentioned his year of birth as 1930. The respondent retired from the service on reaching the age of superannuation on 31.12.1989.

2.1 After his retirement, the respondent raised an industrial dispute stating that according to the certificate of age issued by the Principal of the school, his date of birth was 02.12.1932, and therefore, he should have been continued in service as per the said date of birth. The said dispute, ultimately, culminated into a reference. The Labour Court, after hearing the parties, passed the impugned award with the aforesaid directions. Hence, this petition.

3.0 While admitting the matter on 13.02.2001 this Court had stayed the impugned award of the Labour Court till the final disposal of the petition.

4.0 Mr. AK Clerk learned advocate for the petitioner has contended that when the respondent joined the service of the petitioner he himself had mentioned his year of birth as 1930 in the Form for Provident Fund declaration and nomination. He has submitted that till the respondent attained the age of superannuation, his year of birth was mentioned in the service records as 1930 only.

4.1 Mr. Clerk has submitted that the Certificate issued by the school authority showing the date of birth of the respondent as 02.12.1932 was invalid inasmuch as the said Certificate was not issued by the competent authority under the Act. He has submitted that the Labour Court has committed an error by allowing the reference since the dispute in question was raised after almost 28 years and that to without examining the genuineness and validity of the Certificate in question. He has, therefore, submitted that the Labour Court has committed serious error in passing the impugned award.

5.0 Mr. T R Mishra learned advocate for the respondent has supported the award of the Labour Court and has submitted that the Labour Court was completely justified in passing the impugned award since the correct date of birth of the respondent was 02.12.1932. He has, therefore, stated that no interference is required by this Court in this petition.

6.0 I have heard learned counsel for the parties and perused the documents placed on record. It is well settled law that in service, an employee cannot be permitted to raise a dispute at the fag end of his career. In the present case, the respondent workman has raised a dispute with regard to his birth date after almost 28 years of service and that to after attaining the age of superannuation. Such a dispute cannot be entertained after a lapse of almost 28 years.

6.1 So far as the contention raised by the petitioner as regards the competent authority for the issuance of birth certificate is concerned, the competent authority is the authority under the Birth, Death and Marriage Registration Act. The school authority cannot be said to

be a competent authority under the said Act, and therefore, the Certificate issued by it cannot be said to be legal and valid. Hence, the impugned award of the Labour Court appears to be illegal and perverse on both the counts and hence, it deserves to be quashed and set aside.

7.0 For the foregoing reasons, this petition is allowed. The impugned award dated 04.02.2000 passed by the Labour Court, Ahmedabad, in Reference (LCA) No. 1030 of 1990, is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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